

12:12PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

March 4, 2024

TRANSCRIPT EXCERPT - DIRECT EXAMINATION OF MARK FALZONE
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

UNITED STATES DEPARTMENT OF JUSTICE
BY: JORDAN ALAN DICKSON, ESQ.

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For the Plaintiff

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And

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BY: PARKER ROY MacKAY, ESQ.

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For the Defendant

PRESENT:

BRIAN A. BURNS, FBI Special Agent
MARILYN K. HALLIDAY, HSI Special Agent
KAREN A. CHAMPOUX, USA Paralegal

1 **LAW CLERK:** **REBECCA FABIAN IZZO, ESQ.**

2 **COURT DEPUTY CLERK:** **COLLEEN M. DEMMA**

3 **COURT REPORTER:** **ANN MEISSNER SAWYER, FCRR, RPR, CRR**
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7 * * * * * * *

8
9 (Excerpt commenced at 4:18 p.m.)

04:18PM 10 (Jury is present.)

04:18PM 11 **THE COURT:** The government can call its next witness.

04:18PM 12 **MR. TRIPI:** We call Mark Falzone, Your Honor.

04:19PM 13
04:19PM 14 **M A R K F A L Z O N E,** having been duly called and sworn,
04:19PM 15 testified as follows:

04:19PM 16 **MR. TRIPI:** Ready, Your Honor?

04:19PM 17 **THE COURT:** You may.

04:19PM 18 **MR. TRIPI:** Thank you.

04:19PM 19
04:19PM 20 **DIRECT EXAMINATION BY MR. TRIPI:**

04:19PM 21 Q. Mr. Falzone, good afternoon. How old are you, sir?

04:19PM 22 A. 46.

04:19PM 23 Q. Where are you from originally?

04:19PM 24 A. North Buffalo.

04:19PM 25 Q. Born and raised in Buffalo, New York?

04:19PM 1 A. Yes, sir.

04:19PM 2 Q. How far have you gone in school?

04:19PM 3 A. I have two associate degrees.

04:19PM 4 Q. From where?

04:19PM 5 A. One from the Community College of the Air Force, and one

04:19PM 6 from Bryant and Stratton.

04:19PM 7 Q. And in what? What are your degrees in?

04:19PM 8 A. Criminal justice and accounting.

04:19PM 9 Q. You mentioned one of them was in the Air Force?

04:20PM 10 A. Yes, sir.

04:20PM 11 Q. Did you go to the military sometime after graduating high

04:20PM 12 school?

04:20PM 13 A. Yes.

04:20PM 14 Q. Where did you graduate high school from?

04:20PM 15 A. Lafayette.

04:20PM 16 Q. Is that in Buffalo?

04:20PM 17 A. Yes.

04:20PM 18 Q. How old were you when you joined the Air Force?

04:20PM 19 A. 21. 22. It was in '01.

04:20PM 20 Q. How long were you in the Air Force?

04:20PM 21 A. Four years.

04:20PM 22 Q. So '01 to '05 roughly?

04:20PM 23 A. Yes.

04:20PM 24 Q. What was your job there?

04:20PM 25 A. Security forces.

04:20PM 1 Q. Where were you stationed?

04:20PM 2 A. I was in San Antonio, D.C., and Niagara Falls.

04:20PM 3 Q. So, San Antonio, Texas?

04:20PM 4 A. Yes.

04:20PM 5 Q. Washington, D.C.?

04:20PM 6 A. Yes.

04:20PM 7 Q. And Niagara Falls, New York?

04:20PM 8 A. Yes, sir.

04:20PM 9 Q. When you were -- in 2005, how did you leave the Air

04:20PM 10 Force?

04:20PM 11 A. Honorably.

04:20PM 12 Q. Okay. After that, did you get a job here locally

04:21PM 13 somewhere?

04:21PM 14 A. After that, no, I was a full-time student after the Air

04:21PM 15 Force.

04:21PM 16 Q. Oh, I'm sorry. Is that when you went to Bryant and

04:21PM 17 Stratton?

04:21PM 18 A. Yes.

04:21PM 19 Q. Okay. Can you describe your post military employment for

04:21PM 20 the jury?

04:21PM 21 A. My post military employment?

04:21PM 22 Q. Yep.

04:21PM 23 A. Was I worked for Serio development. I worked for a bunch

04:21PM 24 of different development companies. But I started off with

04:21PM 25 Ron after school.

04:21PM 1 Q. Doing what kind of work?

04:21PM 2 A. Carpentry, flooring, painting, plumbing.

04:21PM 3 Q. So you -- contracting work?

04:21PM 4 A. Yes.

04:21PM 5 Q. How did you learn how to do that kind of work?

04:21PM 6 A. Just growing up and family. My friend's father taught me

04:21PM 7 plumbing, so --

04:21PM 8 Q. Who's that friend's father who taught you plumbing?

04:21PM 9 A. His name is Jason Gober.

04:21PM 10 Q. Now, before you joined the military, had you experimented

04:22PM 11 with drug use?

04:22PM 12 A. Yes.

04:22PM 13 Q. What types of drugs had you experimented with?

04:22PM 14 A. Marijuana and cocaine.

04:22PM 15 Q. And after you got out of the military, did you start

04:22PM 16 experimenting with those drugs again?

04:22PM 17 A. Not until I started going through my divorce.

04:22PM 18 Q. And when was that?

04:22PM 19 A. Right around '05. No, '07, '08.

04:22PM 20 Q. So a few years after you had got out of the military, you

04:22PM 21 had been married, and then you were going through a divorce?

04:22PM 22 A. Yes.

04:22PM 23 Q. Did you have children as well?

04:22PM 24 A. Yes.

04:22PM 25 Q. How many kids do you have?

04:22PM

1 A. Two.

04:22PM

2 Q. Why did you start using marijuana and cocaine again

04:22PM

3 around there time?

04:22PM

4 A. 'Cuz I was stressed, I was losing everything.

04:22PM

5 Q. Approximately how old were your kids when you were going

04:22PM

6 through that divorce?

04:22PM

7 A. Probably two and -- oh, two and ten. Two and 11.

04:23PM

8 Q. You have a son and daughter?

04:23PM

9 A. Yes.

04:23PM

10 Q. Who's older?

04:23PM

11 A. My daughter is 28 right now.

04:23PM

12 Q. Your son's younger?

04:23PM

13 A. Yes, he's 21.

04:23PM

14 Q. Okay. When you were going through that divorce around --

04:23PM

15 I think you framed the time frame '07, '08, when you would

04:23PM

16 use cocaine or marijuana, who would you get that from

04:23PM

17 usually?

04:23PM

18 A. Ron.

04:23PM

19 Q. And when you say "Ron," who's the Ron you're talking

04:23PM

20 about?

04:23PM

21 A. Ron Serio.

04:23PM

22 Q. And is he your friend?

04:23PM

23 A. Yes.

04:23PM

24 Q. How long have been friends with him?

04:23PM

25 A. Since fifth grade.

04:23PM 1 Q. What school did you meet him at?

04:23PM 2 A. I went to Saint Mark's, he went to Saint John's. My

04:23PM 3 cousin was in his class. That's how I met him, through my

04:23PM 4 cousin.

04:23PM 5 Q. And those are Catholic schools here in Buffalo?

04:23PM 6 A. Yes, sir.

04:23PM 7 Q. I guess Saint John's might be in Kenmore, right?

04:23PM 8 A. Yes, that's in Kenmore.

04:23PM 9 Q. Would you characterize him as your best friend?

04:24PM 10 A. Yes, sir.

04:24PM 11 Q. Now, eventually -- and I'll ask you more questions about

04:24PM 12 this later, but eventually did you decide to start making

04:24PM 13 money selling drugs and helping Ron Serio with his drug

04:24PM 14 operations?

04:24PM 15 A. Yes.

04:24PM 16 Q. Approximately when was that?

04:24PM 17 A. 2015 maybe. '14, '15, somewhere in there.

04:24PM 18 Q. So you're estimating 2014, '15?

04:24PM 19 A. Yes.

04:24PM 20 Q. Okay. Now, I'll get into that in more detail in a few

04:24PM 21 moments, but fast forwarding to April 18th, 2017.

04:24PM 22 Did you become aware sometime in proximity to that date

04:24PM 23 that your friend Ron had been arrested?

04:24PM 24 A. Yes.

04:24PM 25 Q. Couple years later, after Ron Serio was arrested in

04:25PM 1 late -- in or about late 2019, did investigators with

04:25PM 2 Homeland Security Investigations track you down and serve you

04:25PM 3 with what's called a target letter?

04:25PM 4 A. Yes.

04:25PM 5 Q. And generally, did the target letter inform you that you

04:25PM 6 may be a target of a federal investigation?

04:25PM 7 A. Yes.

04:25PM 8 Q. What did you do after HSI agents gave you that letter?

04:25PM 9 A. Contacted an attorney.

04:25PM 10 Q. Who was the attorney you contacted, without telling us

04:25PM 11 your discussions, just who was the attorney?

04:25PM 12 A. Thomas Hurley.

04:25PM 13 Q. And after you met -- did you meet with Mr. Hurley?

04:25PM 14 A. Yes.

04:25PM 15 Q. After you met with Mr. Hurley, what did you do?

04:25PM 16 A. I contacted Ron Serio.

04:25PM 17 Q. Okay. Why did you contact Ron Serio?

04:25PM 18 A. Because I was complaining that I didn't have \$5,000 to

04:26PM 19 pay for an attorney.

04:26PM 20 Q. Is that what Mr. Hurley wanted to charge you?

04:26PM 21 A. Yes.

04:26PM 22 Q. And did you go meet with Mr. Serio?

04:26PM 23 A. After he -- he brought me \$5,000.

04:26PM 24 Q. Okay. So before we get to him bringing you \$5,000,

04:26PM 25 describe your conversation with Mr. Serio.

04:26PM 1 A. I was complaining that I'm gonna lose everything because
04:26PM 2 I don't have \$5,000 to pay for an attorney.

04:26PM 3 And he said he didn't want to see me get in trouble. He
04:26PM 4 gave me the money, and he told me to come down and talk to
04:26PM 5 you guys and tell you guys everything.

04:26PM 6 Q. Did -- did he seem to feel badly that he incriminated you
04:26PM 7 in his operations?

04:26PM 8 A. Yes.

04:26PM 9 Q. Are you sitting here today as the result of your choices?

04:26PM 10 A. Yes.

04:26PM 11 Q. When Mr. Serio gave you the money for an attorney, did he
04:26PM 12 give you any stipulations with the money? Did he tell you
04:27PM 13 anything you could or couldn't talk about?

04:27PM 14 A. Negative.

04:27PM 15 Q. Did he try to direct you in any way?

04:27PM 16 A. No, sir.

04:27PM 17 Q. After he gave you the \$5,000, did you hire a lawyer?

04:27PM 18 A. Yes, I did.

04:27PM 19 Q. Mr. Hurley?

04:27PM 20 A. Mr. Hurley, yes, sir.

04:27PM 21 Q. After that, did you and Mr. Hurley arrange to come in and
04:27PM 22 have a meeting with federal agents and prosecutors?

04:27PM 23 A. Yes.

04:27PM 24 Q. After a couple interviews with agents and prosecutors,
04:27PM 25 did you enter what's called a cooperation agreement?

04:27PM

1 A. Yes.

04:27PM

2 Q. And you did that while having Mr. Hurley as your counsel,

04:27PM

3 correct?

04:27PM

4 A. Yes.

04:27PM

5 Q. What's your understanding of what's required of you under

04:27PM

6 your cooperation agreement?

04:27PM

7 A. To tell the truth.

04:27PM

8 Q. Does that include telling the complete truth about

04:27PM

9 Mr. Serio?

04:27PM

10 A. Yes, sir.

04:27PM

11 Q. Everyone involved in him that you know about?

04:27PM

12 A. Yes, sir.

04:27PM

13 Q. Would it be accurate to estimate that you sat for three

04:28PM

14 interviews and testified before a federal grand jury?

04:28PM

15 A. Excuse me?

04:28PM

16 Q. Did you sit through three interviews, and also testify

04:28PM

17 before a federal grand jury?

04:28PM

18 A. Yes.

04:28PM

19 Q. And then prior to your testimony today, you came to a

04:28PM

20 couple trial prep interviews; is that correct?

04:28PM

21 A. Yes, sir.

04:28PM

22 Q. And in those interviews, you reviewed your prior

04:28PM

23 testimony?

04:28PM

24 A. Yes, sir.

04:28PM

25 Q. Okay. Now you indicated that one of the jobs you had was

04:28PM 1 for Serio Development. When did -- when did you start
04:28PM 2 working for Serio Development?

04:28PM 3 A. Right when I was done with school. So, probably -- I
04:28PM 4 don't know, '08, '09, somewhere around there.

04:28PM 5 Q. And that's -- was that a company that was owned by Ron
04:28PM 6 Serio?

04:28PM 7 A. Yes, sir.

04:28PM 8 Q. What type of work did you do for him?

04:28PM 9 A. Everything and anything. Paint, demo, plumbing,
04:29PM 10 electronic --

04:29PM 11 Q. General construction and labor?

04:29PM 12 A. -- hardwood floors. Yes.

04:29PM 13 Q. Now what kind of business was Serio Development?

04:29PM 14 A. Basically he would just flip houses.

04:29PM 15 Q. Now, at the time that you were working for Mr. Serio at
04:29PM 16 Serio Development doing contracting work, were you also aware
04:29PM 17 he was distributing large amounts of marijuana and also
04:29PM 18 opiate pills?

04:29PM 19 A. In '08 and '09?

04:29PM 20 Q. When you started working for him, were you generally
04:29PM 21 aware he was selling marijuana?

04:29PM 22 A. Yes.

04:29PM 23 Q. Were you aware that he was selling pills?

04:29PM 24 A. Yes.

04:29PM 25 Q. And at times when you would be on the job site if you

04:29PM 1 wanted cocaine, would you be able to get it?

04:29PM 2 A. Yes, sir.

04:29PM 3 Q. From who?

04:29PM 4 A. Ron.

04:29PM 5 Q. Now, eventually, I think I asked you this already, and
04:29PM 6 you framed it around 2014, 2015, but did you become involved

04:30PM 7 in his drug-trafficking organization around that time?

04:30PM 8 A. Yes, I did.

04:30PM 9 Q. Why did you decide to get involved in his
04:30PM 10 drug-trafficking organization?

04:30PM 11 A. Because I was in the process of going through a
04:30PM 12 foreclosure on my house.

04:30PM 13 Q. And where was that house?

04:30PM 14 A. On Englewood.

04:30PM 15 Q. What was the address?

04:30PM 16 A. 377.

04:30PM 17 Q. Was that a residence you had owned?

04:30PM 18 A. Yes.

04:30PM 19 Q. And you were going through foreclosure?

04:30PM 20 A. Yes, sir.

04:30PM 21 Q. So in terms of becoming part of the organization --

04:30PM 22 **MR. TRIPI:** Your Honor, I'm going into 801(d)(2)(E)
04:30PM 23 statements, I haven't proffered these.

04:30PM 24 **THE COURT:** Should we take a break?

04:30PM 25 **MR. MacKAY:** Sure.

04:30PM 1 **MR. TRIPI:** Okay. I just realized as I was about
04:30PM 2 to --

04:30PM 3 **THE COURT:** No, that's okay. So let's take a very
04:30PM 4 short break. Remember my instructions about not talking about
04:30PM 5 the case, and not making up your mind.

04:30PM 6 We'll see you back here as soon as we can see you
04:30PM 7 back here. It might just be a couple minutes.

04:31PM 8 (Jury excused at 4:31 p.m.)

04:31PM 9 **MR. TRIPI:** Mr. Falzone, you can step out briefly.
04:31PM 10 Is that okay, Judge?

04:31PM 11 **THE COURT:** We can do it either excluding the
04:31PM 12 witness, or we can do it Q and A.

04:31PM 13 **MR. TRIPI:** I'll proffer, Judge, I think it will be
04:31PM 14 quicker.

04:31PM 15 **THE COURT:** Fine. So why don't you step out, sir.
04:31PM 16 Thank you.

04:31PM 17 (Witness excused at 4:31 p.m.)

04:31PM 18 **MR. TRIPI:** And again, Judge, I apologize. I was
04:31PM 19 mindful of the time, and just wanting to get the witness in
04:31PM 20 before 5:00.

04:32PM 21 **THE COURT:** No apology necessary.

04:32PM 22 **MR. TRIPI:** I noticed the witness has left the room,
04:32PM 23 Judge. At this point in the testimony, I'm going to elicit
04:32PM 24 conversations regarding how Mr. Falzone came to be a part of
04:32PM 25 Serio's drug-trafficking organization.

04:32PM 1 I anticipate the testimony will be essentially he
04:32PM 2 explained to Mr. Serio he needed money. Therefore, Mr. Serio
04:32PM 3 offered to pay him \$500 to help unload marijuana when it would
04:32PM 4 come into town. The witness will get into more specifics
04:32PM 5 about that.

04:32PM 6 He'll also talk about then also acquiring marijuana
04:32PM 7 from Mr. Serio to distribute. I anticipate it will be roughly
04:32PM 8 5 pounds every time marijuana that was fronted by Mr. Serio.

04:32PM 9 The witness will then talk about three shipments that
04:32PM 10 came in from Canada. The first one to his residence, where he
04:32PM 11 helped unload the marijuana which came in, I think, in mulch,
04:32PM 12 a cover load of mulch. He'll explain that Mr. Masecchia was
04:32PM 13 at that unloading of the marijuana.

04:33PM 14 He'll further explain the locations of the next
04:33PM 15 three -- the other two loads. There may be some limited
04:33PM 16 conversations surrounding those, but I don't anticipate too
04:33PM 17 much. It will mostly be acts that I'll be eliciting from the
04:33PM 18 witness.

04:33PM 19 He'll describe a trip that he took with Mr. Serio and
04:33PM 20 Anthony Gerace regarding going to acquire marijuana in
04:33PM 21 New York City and bringing it back to Buffalo.

04:33PM 22 He'll describe conversations that he had with
04:33PM 23 Mr. Serio about Anthony Gerace vis-à-vis protection.

04:33PM 24 So, in terms of as he's getting involved in the
04:33PM 25 operation, obviously he's told you Mr. Serio is his best

friend. They have a conversation firstly. That's going to discuss whether or not Serio shared that they had some type of law enforcement protection.

In that context, this will be your coconspirator statement, Judge. Mr. Serio confirms for him that he pays Masecchia money to pay to Mr. Bongiovanni for protection. So that's sort of one big ticket conversation.

The next one will be I anticipate asking did he give you any examples of assistance that Bongiovanni has provided to individuals he was working with? And he will describe a conversation he had with the Serio regarding the fact that Bongiovanni had helped Anthony Gerace with an issue that he had with the Amherst Police Department regarding cocaine at the request of Peter Gerace. And, so --

THE COURT: How is that statement from Serio -- everything you said so far I follow.

MR. TRIPI: Yep.

THE COURT: Tell me how that statement from Serio to this witness is in furtherance --

MR. TRIPI: I figured that would be the one you asked about, Your Honor. So I would say that coconspirator statements under those that foster trust amongst conspirators. The case I looked at was U.S. versus Giganti, 166 F 3d.

THE COURT: You came up with the answer before I -- you came up with my question before I asked.

04:35PM 1 **MR. TRIPI:** I tried. I'm one for a hundred on those,
04:35PM 2 but I try.

04:35PM 3 **THE COURT:** So it involves getting this gentleman to
04:35PM 4 participate in the conspiracy because he's more comfortable
04:35PM 5 given the fact they had protection?

04:35PM 6 **MR. TRIPI:** Yeah. And reassuring him as he goes
04:35PM 7 along, as he's getting deeper and deeper involved. He goes
04:35PM 8 from unloading packages, to traveling to New York City, to
04:35PM 9 being sort of neck deep in the organization. So I would say
04:35PM 10 that would be the argument there, Your Honor.

04:35PM 11 And then in that same vein, so the conversations in
04:35PM 12 sequence happen first, Bongiovanni provides his protection
04:35PM 13 vis-à-vis Serio.

04:35PM 14 Next, assurances. Give me an example, that's the
04:35PM 15 Anthony Gerace discussion we just talked about.

04:35PM 16 The next one in sequence is was there another example
04:35PM 17 of essentially Mr. Serio telling you he learned of
04:35PM 18 investigations, and he will explain yes, Serio told me that --
04:36PM 19 I'm quoting from grand jury, just easier -- that Lou Selva
04:36PM 20 told Mike Masecchia that Joe Bongiovanni told him, meaning
04:36PM 21 Selva, that somebody named Mario Vacanti essentially was under
04:36PM 22 investigation.

04:36PM 23 So, to sum it up, he learns of the fact that Mario
04:36PM 24 Vacanti, another distributor for Serio, was under
04:36PM 25 investigation, that Bongiovanni provided that Intel to Selva.

04:36PM 1 **THE COURT:** And there's about four levels of hearsay
04:36PM 2 there, but they're all coconspirators.

04:36PM 3 **MR. TRIPI:** They're all part of the conspiracy. So
04:36PM 4 Vacanti is a distributor for Serio. There's been testimony
04:36PM 5 about that already. There will be future testimony about
04:36PM 6 that, as well. And he will also testify that all of the
04:36PM 7 participants are in the organization.

04:36PM 8 I have two more. Then after Mr. Serio's arrest,
04:36PM 9 Mr. Falzone meets with Mike Masecchia at a Tim Horton's on
04:36PM 10 Main Street in Williamsville. They sit down, and essentially
04:36PM 11 in sum and substance Masecchia says I don't know how this
04:37PM 12 happened, I checked with my guy, and nothing was going on.
04:37PM 13 That's discussing the Serio arrest.

04:37PM 14 And if permitted, I'll ask him what was your
04:37PM 15 understanding of I checked with my guy, and he'll say my
04:37PM 16 understanding --

04:37PM 17 **THE COURT:** How is that in furtherance of the
04:37PM 18 conspiracy?

04:37PM 19 **MR. TRIPI:** Well, they're trying now, and I think the
04:37PM 20 Court might have made this point in one of the prior
04:37PM 21 arguments, but now the arrest has happened, now they're trying
04:37PM 22 to figure out where they're vulnerable.

04:37PM 23 So there's a conversation between Masecchia and
04:37PM 24 Falzone where they're sort of having a discussion about how
04:37PM 25 did this happen. And that's a precursor to a conversation two

04:37PM 1 weeks later at Mr. Falzone's house, participants include
04:37PM 2 Falzone, Masecchia, and Ron's brother Tom where Masecchia says
04:37PM 3 during that meeting, okay, now, you, you're on the no-fly
04:38PM 4 list, meaning you have protection Tom Serio. Falzone, you're
04:38PM 5 not on the no-fly list, meaning he anticipates -- he believes
04:38PM 6 at that juncture he's no longer protected.

04:38PM 7 And then they have a discussion about who they think
04:38PM 8 the cooperator was that got Ron in trouble.

04:38PM 9 And there's a name that comes up, for purposes of
04:38PM 10 right now, KB is the name that comes up. So they discuss --
04:38PM 11 they sort of have a discussion about who they think the
04:38PM 12 informant is.

04:38PM 13 So I think the prior one that you had a bit of a
04:38PM 14 question about at Tim Horton's is it leads us into the larger.

04:38PM 15 **MR. MacKAY:** With respect to the first three, no
04:38PM 16 objection under that coconspirator exception. I would agree
04:38PM 17 that it works that way.

04:38PM 18 However, the last three all occur after the
04:38PM 19 conspiracy is essentially concluded.

04:38PM 20 **THE COURT:** The last three?

04:38PM 21 **MR. MacKAY:** Well, what I take to be the last three.
04:38PM 22 The Michael Masecchia Tim Horton's meeting, the no-fly list
04:39PM 23 discussion, and the discussion about this individual, KB.
04:39PM 24 Those are really trying to backtrack things, backstop things
04:39PM 25 after the conspiracy has already been concluded with Ron

04:39PM 1 Serio's arrest. These all undoubtedly occur after that, they
04:39PM 2 don't involve Mr. Bongiovanni directly in any fashion. It's
04:39PM 3 really people just scrambling after the fact trying to put
04:39PM 4 things together and see what happens.

04:39PM 5 So, I mean, they're not furthering the conspiracy
04:39PM 6 because payment of money and transfer of information has been
04:39PM 7 definitively cut off with Ron Serio's arrest on April 18,
04:39PM 8 2017.

04:39PM 9 **MR. TRIPI:** I would point out, Judge, that the
04:39PM 10 charged conduct runs till 2019. Obviously, we all know the
04:39PM 11 law, that you're presumed to be in a conspiracy until you
04:39PM 12 withdraw. But moreover, this indictment alleges that part of
04:39PM 13 the conspiracy was concealment of what had been occurring.

04:39PM 14 So to the extent that the principal focus of the
04:39PM 15 drug-trafficking organization has just been arrested, and now
04:39PM 16 other members of the conspiracy are in scramble mode trying to
04:39PM 17 get on the same sheet of music to figure out where their
04:40PM 18 vulnerabilities lie, it's also in furtherance of the
04:40PM 19 conspiracy evidence.

04:40PM 20 **THE COURT:** Yeah, why isn't he right? If the
04:40PM 21 conspiracy -- if the conspiracy is to --

04:40PM 22 Colleen, can you shut the door?

04:40PM 23 **THE CLERK:** Yes, Judge.

04:40PM 24 **THE COURT:** If the conspiracy is to protect and
04:40PM 25 conceal from the authorities the drug organization's conduct,

04:40PM 1 why -- why does that mean the conspiracy stops as soon as
04:40PM 2 Serio gets arrested?

04:40PM 3 **MR. MacKAY:** Because I think the only deed that goes
04:40PM 4 back to Mr. Bongiovanni is essentially the payment, which is
04:40PM 5 sort of one stream that's coming out from Mr. Serio, and the
04:40PM 6 actual activity of the drug organization is essentially cut
04:40PM 7 off from Mr. Bongiovanni. I mean, what they're doing
04:40PM 8 particularly after that point in time.

04:40PM 9 **THE COURT:** So the drug conspiracy ends, but I'm not
04:40PM 10 so sure that the -- that the protection conspiracy ends.
04:41PM 11 Right? Am I right?

04:41PM 12 **MR. TRIPI:** That's correct, Judge. And also
04:41PM 13 concealment of the drug conspiracy that had been on going.
04:41PM 14 And Mr. Bongiovanni -- so you're going to have testimony,
04:41PM 15 because obviously coconspirator statements are we're in a
04:41PM 16 conspiracy, so it's as if Mr. Bongiovanni said it, right?
04:41PM 17 That's why it comes in. Mr. Bongiovanni is doing his own sort
04:41PM 18 of damage control, he's, we would submit, removing a file --

04:41PM 19 **THE COURT:** Right.

04:41PM 20 **MR. TRIPI:** -- he's wiping his DEA phone, not
04:41PM 21 giving --

04:41PM 22 **THE COURT:** And these conversations all occur
04:41PM 23 prior --

04:41PM 24 **MR. TRIPI:** Prior to that. And then he's also
04:41PM 25 interviewed -- Bongiovanni himself is interviewed by DEA OIG,

04:41PM 1 and the same agents, HSI agents who served him the target
04:41PM 2 letter, later interview Bongiovanni, and we charge false
04:41PM 3 statements.

04:41PM 4 And those statements are not only independent counts,
04:41PM 5 but they're also overt acts in the same conspiracy. So I
04:41PM 6 think that under that same logic it applies.

04:41PM 7 **MR. SINGER:** May we have one moment, Judge?

04:41PM 8 **THE COURT:** You can.

04:42PM 9 **MR. TRIPI:** On a different note, Judge, there's no
04:42PM 10 way I'm going to finish the direct. I've got 30 to 45
04:42PM 11 minutes. So do you want to do the argument on this and cut
04:42PM 12 the jury?

04:42PM 13 **THE COURT:** Yeah, we may.

04:42PM 14 **MR. TRIPI:** I just noticed we're almost at quarter
04:42PM 15 to, that's all.

04:42PM 16 **MR. MacKAY:** So, Judge, to respond to that --

04:42PM 17 **THE COURT:** Why don't we get the jury in, let them go
04:42PM 18 home, and then we'll finish the argument. Okay.

04:42PM 19 **MR. TRIPI:** Thank you, Judge.

04:42PM 20 (Jury seated at 4:43 p.m.)

04:43PM 21 **THE COURT:** The record will reflect all our jurors
04:43PM 22 are present again.

04:43PM 23 Rather than have you folks wait and have us continue
04:43PM 24 our discussion for five or ten more minutes, and then have you
04:43PM 25 come back for five minutes of testimony, we're going to let

04:43PM 1 you go home now. It doesn't make any sense to keep you folks.
04:44PM 2 We'll finish our discussion, but you folks can go on your way
04:44PM 3 home.

04:44PM 4 So we'll break for the evening. Please remember my
04:44PM 5 instructions. Don't discuss this case with anyone at all.
04:44PM 6 Don't research the case. Don't use tools of technology to
04:44PM 7 communicate about the case or to research the case. Don't
04:44PM 8 read, or watch, or listen to any news coverage about the case
04:44PM 9 if there is any while the case is in progress. And don't make
04:44PM 10 up your mind about anything until the case has been submitted
04:44PM 11 to you.

04:44PM 12 See you back here at 9:30 tomorrow morning. Drive
04:44PM 13 carefully, and get a good night's sleep. Thanks.

04:44PM 14 (Jury excused at 4:44 p.m.)

15 (Excerpt concluded at 4:44 p.m.)

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18 **CERTIFICATE OF REPORTER**

19 In accordance with 28, U.S.C., 753(b), I certify that
20 these original notes are a true and correct record of
21 proceedings in the United States District Court for the
22 Western District of New York on March 4, 2024.

23 s/ Ann M. Sawyer
24 Ann M. Sawyer, FCRR, RPR, CRR
25 Official Court Reporter
U.S.D.C., W.D.N.Y.